

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1012 of 2019

Arising Out of PS. Case No.-315 Year-2018 Thana- KOTWALI District- Munger

BOBY RANI W/O Sri Fanikant Mandal R/O Mohalla- Dilawarpur Bara P.S.-
Kotwali, District- Munger.

... .. Petitioner

Versus

1. The State Of Bihar through Chief Secretary Of Bihar, Old Secretariat Bailey Road Patna.
2. The Secretary, Home (Police) Department of Bihar Patna. Old Secretariat Bailey Road, Patna.
3. Director General of Police, Bihar, Patna Old Secretariat Bailey Road Patna.
4. Inspector General of Police, Bhagalpur Range, Bhagalpur, CTS Campus Nathnagar, Bhagalpur.
5. Deputy Inspector General of Police, Eastern Range, Bhagalpur Bari Khanjarpur, District- Bhagalpur.
6. Divisional Commissioner Munger Division, Munger Fort Area P.S. Kotwali, District- Munger.
7. Deputy Inspector General of Police, Munger Range, Munger Fort area P.S. Kotwali, District- Munger.
8. District Magistrate, Munger Fort Area P.S.- Kotwali, District-Munger.
9. Superintendent of Police, Munger Fort Area P.S.- Kotwali, District- Munger.
10. Sub-Divisional Magistrate -cum-Sub Divisional Officer Sadar Munger Fort Area P.S.- Kotwali, District- Munger.
11. Harishankar Kumar, Additional Superintendent of Police, Munger Fort Area, P.S.- Kotwali, District- Munger.
12. The Station House Officer cum officer-In-Charge, Kotwali Police Station, Munger.
13. Sri Mazhar Makboo, Officer In charge Purabsarai Town Out Post under Kotwali Police Station, PO- Munger and PS.- Kotwali District- Munger.
14. Shailendra Kumar Sinha, the then Investigation Officer Presently Posted at Muffasil Police Station Munger.

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Dinesh Kumar Gupta, Advocate
For the Respondent-State:		Mr.Manish Kumar, GP-4
		Mr. Ajay Kumar, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 24-07-2019



Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Articles 226 and 227 of the Constitution of India has been filed by the petitioner for directing the respondents/police authorities to fairly investigate Kotwali P. S. Case No. 315 of 2018 dated 09.08.2018 registered under Sections 341, 342, 324 and 307 read with 34 of the Indian Penal Code (for short 'IPC'). Later on, Section 302 of the IPC was also added in the first information report (for short 'FIR') pursuant to the death of the victim.

3. Learned counsel appearing for the petitioner submitted that in the instant case, the informant has been set up by the land mafias of the locality due to ongoing litigation relating to land. The petitioner has filed several representations to the superior authorities. However, all such representations went unheard. The contention is that in absence of fair investigation of the case, the truth cannot be revealed and persons involved in commission of crime cannot be identified. His further contention is that in case, the petitioner is put behind the bar on the basis of a tainted investigation, the truth would never be revealed.

4. Per contra, learned counsel appearing for the State submitted that the informant Suresh Ram had given his



fardbeyan on 09.08.2018 at 7.36 a.m. in emergency ward of Sadar Hospital, Munger. He had categorically stated that in the morning, at about 5 a.m., while he was going to the house of one Dharmendra Tanti, a resident of Dilawarpur and reached near the Durga Asthan, Fanikant Mandal, husband of the petitioner, his wife, the petitioner and 3-4 unknown persons caught hold of him. The petitioner sprinkled petrol on his person and her husband set him on fire as a result of which he sustained grievous burn injuries. On hue and cry raised by him, one Puno Mandal reached to the place of occurrence and somehow tried to rescue him and brought him to Sadar Hospital where he is undergoing treatment.

5. He contended that after recording the fardbeyan of the informant Kotwali (Purabsarai) P. S. Case No. 315 of 2018 was registered on 09.08.2018 at 6.30 a.m. inter alia under Section 307 read with 34 of the IPC and investigation was taken up. In course of investigation, statements of witnesses were recorded. As the condition of injured Suresh Ram had deteriorated, he was taken to PMCH, Patna on 09.08.2018 itself and in course of treatment he died on 11.08.2018 at 8 p.m. After the death of the informant, Section 302 of the IPC was also added to the FIR. He contended that on completion of investigation, charge-sheet has already been submitted as against the husband of the petitioner and



one Dayanand Mandal. However, the petitioner is absconding and evading her arrest. He further contended that there is no truth behind the allegation that the investigation is tainted or is not being conducted in a fair and impartial manner.

6. I heard learned counsel for the parties and perused the record.

7. A counter-affidavit has also been filed on behalf of respondent no. 9 wherein the contentions advanced by the learned counsel for the State have been averred.

8. The admitted facts of the case are that the petitioner, her husband and one Dayanand Mandal have been made named accused in a case, which was initially registered inter alia under Section 307/34 of the IPC but, upon death of the informant, who is also the victim of the case, Section 302 of the IPC has been added to the FIR. The investigation as far as the husband of the petitioner and Dayanand Mandal has been completed and a report under Section 173(2) of the Code of Criminal Procedure (for short 'CrPC') has already been filed in the court. As the petitioner is evading arrest, the police have yet not completed investigation against her and a police report is awaited.

9. To hold investigation into a cognizable offence is the statutory right of the police. At the stage of investigation, an



accused has no say. The veracity of the allegations can be tested by the police during investigation. At this stage, even the court has no say. Once the investigation is completed, the police are duty bound to submit their report before the court. On receipt of the police report under Section 173(2) of the CrPC, the court before which it is filed has to apply its mind and take into consideration the materials collected during investigation. After receipt of the police report, the court may either agree with the police report or differ with the same. It is not bound by the conclusions arrived at by the police. In the instant case, since the investigation as against two of the accused persons have been completed and report under Section 173(2) of the CrPC has been filed in the court, it is for the court concerned to look into the materials and pass appropriate orders in accordance with law. As far as the petitioner is concerned, investigation against her is still pending. An investigation into a cognizable offence is always confidential. The law presumes that she has no access to the materials collected during investigation by the police. She would be entitled to receive the police papers including the statements of witnesses recorded under Section 161(3) of the CrPC only the police report is submitted against her in compliance of Section 207 of the CrPC. At this stage, she



cannot take the plea that the investigation is either tainted or unfair.

10. The application being devoid of any merit. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.07.2019
Transmission Date	27.07.2019

